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SUBJECT: ICTR PREPARES FOR CLOSURE, SIGNIFICANT WORK REMAINS

¶1. (SBU) SUMMARY: Officials of the International Criminal Tribunal for Rwanda (ICTR) briefed Dar es Salaam-based diplomats September 25 on the status of the tribunal's work. ICTR officials expected to meet the planned 2010 deadline for closure of the tribunal, despite some case delays. However, plans for a residual mechanism to handle cases after 2010 remained unclear; ICTR officials stated that any transfers to national jurisdiction would be contingent on Rwanda establishing video conferencing and witness protection programs. ICTR asked for support as it seeks the return of fugitives from DRC, Zimbabwe, and Kenya. ICTR's president will travel to UNGA in mid-October to discuss these and other issues. He noted the U.S. is USD 29.8 million in arrears. END SUMMARY

¶2. (U) On September 25, PolOff joined members of the "Friends of ICTR" group, including Ambassadors to Tanzania from Germany, the United Kingdom, Italy, Belgium, and Canada and Political Officers from France, Germany and the Netherlands at ICTR Headquarters in Arusha for a meeting with Dennis Byron, President of the ICTR; Hassan B. Jallow, Chief Prosecutor; and Bongani Majola, Registrar.

Progress towards and Obstacles to 2010 Closure

¶3. (U) Byron detailed the court's current workload: seven ongoing trials and an additional six cases, involving 16 accused, for which ICTR staff are preparing judgments. Byron expected four judgments to be handed down before the end of the year, including a decision in the Tharcisse Muvunyi retrial. In addition, two new cases are scheduled to start in October and November. While the evidence phase for several cases is likely to continue into 2010 due to procedural delays, Byron expects all remaining judgments to be rendered before the end of 2010. Byron explained that some cases had experienced delays due to problems locating witnesses, ailing defendants, and staffing constraints. In an effort to accelerate the process, ICTR is working to compress the timeline of cases while maintaining strict adherence to fair trial standards.

¶4. (U) With ICTR's closure in the offing, Byron highlighted the problem of staff retention and the impact it is having on ICTR's operations. He offered the example of one prosecutor who recently departed to work for the Canadian government; he requested the High Commissioner's assistance in having her seconded back to ICTR. Byron said they are working to find a means of offering contractual security to employees to encourage them to complete their work with ICTR. However, the tribunal needs sufficient financial resources to maintain its staff and work towards wrapping up the proceedings.

¶5. (SBU) Byron fielded several questions regarding the post-2010 plans for new and existing cases, appeals, and the creation of the ICTR archives. Byron said the UN Security Council had not made any decisions regarding the residual mechanism for ICTR or the location of the ICTR archives. However, he noted his preference for separate

mechanisms to handle residual cases from ICTR and the International Criminal Tribunal of the Former Yugoslavia, with the ICTR mechanism and archive retained in Arusha.

¶16. (SBU) Prosecutor Jallow said he believes nine of the twelve remaining fugitives can be referred to national jurisdiction. Jallow said, however, that although transfer may be legally possible for nine of the fugitives, Rwanda must address two outstanding logistical barriers before ICTR will initiate transfers. Rwanda's courts do not have the technological capabilities to support video conferencing, although Rwanda enacted legislation to enable witness testimony by video link. In addition, Rwanda does not have an established witness protection program. Jallow said the government of Rwanda needed both technical and financial assistance to set up a witness protection program. Registrar Majola commented that Rwandan officials had not been fully cooperative with ICTR in resolving these two issues.

Problems with State Cooperation

¶17. (SBU) Of the remaining 12 fugitives, Byron said the majority are in the Democratic Republic of Congo. However, there is one in Kenya and another in Zimbabwe. He lamented the lack of cooperation from these states on bringing these individuals to justice, though he said the recent cooperation from the DRC on the transfer of Gregoire Ndahimana set a good precedent for future collaboration.

¶18. (SBU) The British High Commissioner noted the month long delay between Ndahimana's capture and his transfer to the ICTR. Jallow explained that authorities in the DRC transferred Ndahimana to Kinshasa instead of Goma as originally planned, asserting the need to interview him for national security reasons. Once Ndahimana was

in Kinshasa, the GDRC would not give ICTR a date for his transfer. (Note: During the discussion of the handover, the Prosecutor noted that GDRC officials asked that Laurent Nkunda be transferred to Kinshasa. No further details of this exchange were provided.) Byron claimed to have precipitated the transfer by writing to President Kabila of Byron's plan to raise the issue during the UNGA, which Kabila was scheduled to attend.

¶19. (SBU) Byron further expressed concern about the lack of support from Kenya and Zimbabwe in securing the return of Felicien Kabuga and Protais Mpiranya. He said Kenya had stopped responding to ICTR's requests for the return of Kabuga. Although the GOZ had established a team to find Mpiranya, it had been disbanded. ICTR is trying to reestablish a dialogue with Zimbabwe. Byron said he would engage the President or Prime Minister of Zimbabwe directly if he continued not to get cooperation, although he doubted the Prime Minister has the capacity to assist. The Registrar said he would like western governments to "shame" Kenya and Zimbabwe into handing over these suspects.

On the ICTR President's Agenda for UNGA

¶10. (U) Byron will travel to New York to present the ICTR's budget in mid-October. Although he declined to give the budget estimate, Byron indicated the budget would be slightly lower than last year. However, Byron expressed concern that ICTR was having difficulty getting on the UNGA agenda and requested assistance from the Friends. On the budget, the Registrar thanked the Friends for their past financial support, but indicated that the U.S. had an unpaid balance of USD 29.8 million and the Belgians an outstanding balance of USD 1.7 million.

¶11. (U) In New York, ICTR officials will also seek funding for several proposals. In 2000, ICTR began the Medical Support Project for Witnesses living with HIV and AIDS, which offers counseling, care, and treatment to HIV-positive witnesses. Because the funding for this initiative will be depleted in December, ICTR is requesting USD 200,000 for 2010 and USD 200,000 for 2011 to continue the project. In addition, ICTR would like to conduct an appellate advocacy training to build its staff's capacity to handle appeals. This program would cost USD 180,000.

¶12. (U) The final item on Byron's agenda for UNGA is the disparity in benefits offered to the ICTR judges. Byron noted with some concern that the nine judges originally hired to hear cases and

those hired subsequently to assist with cases are not offered the same compensation. Given the duration of their service and the significance of their role, he believes the additional nine judges should be eligible for pensions.

ICTR Detention Facility

¶13. (U) Following the meeting at ICTR, the Friends of ICTR group toured the tribunal's detention facility, which currently holds 38 individuals who are either serving their sentences, awaiting trial, or appealing their sentences. (Note: twenty-four individuals convicted by the ICTR are serving out their sentences in Mali (15) and Benin (9). Saidou Guindo, Commanding Officer of the detention facility, said that prisoners had been very concerned about the prospect of being transferred to Rwanda to finish their sentences. However, once the decision was made to send inmates to Mali and Benin, the atmosphere in the facility immediately improved.)

¶14. (U) Conditions in the prison are good. Prisoner are housed in individual cells with opportunities to meet with lawyers, exercise, communicate with family, practice their religion, watch television, study English, and use a computer. Prisoners awaiting trial and those already sentenced are kept in separate cell blocks. Prisoners who are serving as witnesses in other trials are in private cell blocks.

ANDRE